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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- V. -

KENYATTA TAISTE,

Defendant.

18 Cr. 684 (VM)

ORIGINAL

KENYATTA TAISTE, :
: :
Defendant. :
:
- - - - - - - - - - - - - - - X

WHEREAS, with the defendant's consent, his guilty plea
allocution was made before a United States Magistrate Judge on
December 18, 2019;

WHEREAS, a transcript of the allocution was made and

the record was transcribed to the District Court, and

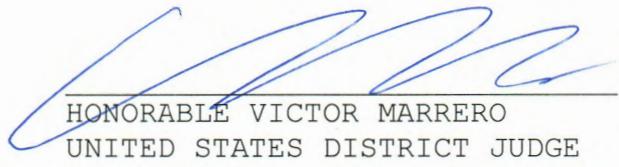
WHEREAS, upon review of the transcript, en

WHEREAS, upon review of that transcript, this Court has determined that the defendant entered the guilty plea knowingly and voluntarily and that there was a factual basis for the guilty plea;

IT IS HEREBY ORDERED that the defendant's guilty plea
is accepted.

Dated: New York, New York
Dated: *10 March 2020*

SO ORDERED:



HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK

JCIETAIP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 684 (KNF)

5 KENYATTA TAISTE,

6 Defendant.

Plea

7 -----x
8 New York, N.Y.
9 December 18, 2019
10 11:30 a.m.

12 Before:

13 HON. KEVIN N. FOX,
14 MAGISTRATE JUDGE

APPEARANCES

15 GEOFFREY S. BERMAN
16 United States Attorney for the
17 Southern District of New York
JESSICA GREENWOOD, ESQ.
Assistant United States Attorney

18 ZACHARY MARGULIS-OHNUMA, ESQ.
19 VICTORIA MEDLEY, ESQ.
Attorneys for Defendant

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1 (Case called)

2 THE COURT: Please be seated.

3 THE DEPUTY CLERK: This is United States v. Kenyatta
4 Taiste.

5 Counsel, please give your appearance for the record.

6 MR. MARGULIS-OHNUMA: Jessica Greenwood, Assistant
7 United States Attorney on behalf of the Government.

8 THE COURT: Good morning.

9 MR. MARGULIS-OHNUMA: Zachary Margulis-Ohnuma and
10 Victoria Medley on behalf of the defendant, Kenyatta Taiste,
11 who is seated between us.

12 THE COURT: Good morning.

13 MS. MEDLEY: Good morning.

14 THE DEFENDANT: Good morning.

15 THE COURT: Is there an application on behalf of
16 Ms. Taiste?

17 MR. MARGULIS-OHNUMA: Yes. Ms. Taiste withdraws her
18 previously-entered plea of not guilty, and at this time seeks
19 to enter a plea of guilty to Count One of the indictment
20 pursuant to an agreement.

21 THE COURT: Very well.

22 Ms. Taiste, I have before me indictment 18 Criminal
23 684, a one-count indictment, charging a violation of Title 21
24 United States Code Section 853.

25 I'm sorry. Count One of the indictment charges a

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1 violation of Title 21 United States Code Section 846, which
2 makes it a violation for a person to conspire with others to
3 violate the laws of the United States with respect to
4 controlled substances.

5 You have a right to have this morning's proceeding
6 presided over by a district judge. You may, if you wish,
7 consent to have a magistrate judge preside at this morning's
8 proceeding.

9 In that connection, I have before me a document, which
10 is labeled "consent to proceed before a United States
11 magistrate judge on a felony plea allocution."

12 Would you swear the defendant.

13 THE DEPUTY CLERK: Stand and raise your right hand,
14 please.

15 (Defendant sworn)

16 THE COURT: Thank you.

17 I want to show you the consent form about which I have
18 been speaking.

19 Do you recognize the document?

20 THE DEFENDANT: Yes.

21 THE COURT: Did you have an opportunity to review it
22 with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Is there anything contained in the consent
25 form that you do not understand?

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1 THE DEFENDANT: No, sir.

2 THE COURT: Is that your true signature on the consent
3 form?

4 THE DEFENDANT: Yes.

5 THE COURT: Did anyone force you to sign the document?

6 THE DEFENDANT: No, sir.

7 THE COURT: I turn my attention to your counsel.

8 Counsel, did you also sign the consent form?

9 MR. MARGULIS-OHNUMA: Yes.

10 THE COURT: Very well. I shall sign the document and
11 we shall continue.

12 Would you state your full name, please?

13 THE DEFENDANT: Kenyatta Taiste.

14 THE COURT: In the last four hours, have you consumed
15 any medicine, alcohol, or drugs that would affect your ability
16 to understand what you're doing here today?

17 MR. MARGULIS-OHNUMA: Judge, we're happy to answer
18 that question, but if we could seal that portion of the
19 transcript regarding her medical situation.

20 THE COURT: I don't see any reason to seal a question,
21 and I don't know what the answer is going to be. It will
22 either be yes or no.

23 MR. MARGULIS-OHNUMA: Right. The answer is going to
24 be yes, and if you get into the details of the medications, I'd
25 like that to be sealed.

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1 THE COURT: Well, let me have the answer to the
2 question and then we'll go from there.

3 THE DEFENDANT: Yes, I have consumed drugs; but no, it
4 won't affect my ability.

5 THE COURT: All right.

6 Are you under the care of a physician or psychiatrist
7 for any condition?

8 THE DEFENDANT: Yes.

9 THE COURT: Is there anything about the treatment
10 you're getting for the condition that would affect your ability
11 to understand what you're doing here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you ever been treated for alcoholism
14 or drug addiction?

15 THE DEFENDANT: Yes. Yes, sir.

16 THE COURT: When was the most recent treatment for
17 either of those conditions?

18 THE DEFENDANT: Last Thursday.

19 THE COURT: Is there anything about that treatment you
20 received last Thursday that would affect your ability to
21 understand what you're doing here today?

22 THE DEFENDANT: Oh, no, sir.

23 THE COURT: What is the extent of your education?

24 THE DEFENDANT: I have some college. I attended some
25 college. I attended college; I just didn't complete it.

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1 THE COURT: Have you received a copy of indictment 18
2 Criminal 684?

3 THE DEFENDANT: Yes. Yes, I have.

4 THE COURT: Would you like to have the indictment read
5 to you now in open court?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you had sufficient opportunity to
8 speak with your attorneys about the charge contained in the
9 indictment and how you wish to plead to it?

10 THE DEFENDANT: Excuse me. Could you repeat that?

11 THE COURT: Have you had sufficient opportunity to
12 speak with your attorneys about the charge contained in
13 indictment 18 Criminal 684 and how you wish to plead to it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand what it says in the
16 indictment that you --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you satisfied with the assistance that
19 your attorneys have rendered to you in connection with this
20 matter?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you ready to plead to indictment 18
23 Criminal 684?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What is your plea, guilty or not guilty?

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1 THE DEFENDANT: Guilty.

2 THE COURT: Now, if you are not a United States
3 citizen, by your tender of a plea of guilty to the offense set
4 forth in indictment 18 Criminal 684, you may effect adversely
5 your ability to remain within the United States, become a
6 United States citizen, or be admitted into the United States.

7 Do you understand?

8 THE DEFENDANT: Yes, I understand.

9 THE COURT: I have to determine whether your plea of
10 guilty is being made voluntarily and whether you understand
11 fully the nature of the charge made against you and the
12 possible consequences of your plea so I shall be asking you
13 additional questions.

14 As I indicated earlier, the sole count of the
15 indictment charges a violation of Title 21 United States Code,
16 Section 846.

17 More specifically, it is alleged through the
18 indictment that you conspired with another person or persons to
19 distribute and possess with intent to distribute 500 grams and
20 more of mixtures and substances containing a detectable amount
21 of methamphetamine, its salts, and salts of its isomers, in
22 violation of Title 21 Section 841(b)(1)(A) and Title 21 United
23 States Code Section 846.

24 The law provides as a maximum penalty for the offense
25 set forth in the indictment following a period of lifetime

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1 imprisonment, a mandatory minimum sentence of 10 years'
2 imprisonment, a maximum lifetime term of supervised release, a
3 mandatory minimum term of five years' supervised release, a
4 maximum fine pursuant to Title 18 United States Code Section
5 3571 and Title 21 United States Code 841(b)(1)(A) of the
6 greatest of \$10 million twice the gross pecuniary gain derived
7 from the offense or twice the gross pecuniary loss to persons
8 other than yourself as a result of the offense and the
9 mandatory \$100 special assessment.

10 If you are sentenced to a term of supervised release
11 and violate the terms and conditions of that supervised release
12 such that it is revoked, you expose yourself to serving in
13 prison all or part of the term of supervised release authorized
14 by statute for the offense that resulted in such term of
15 supervised release without credit for time previously served on
16 post-release supervision.

17 Do you understand the nature of the charge made
18 against you in Count One of the indictment?

19 THE DEFENDANT: Yes, sir. I understand the charge.

20 THE COURT: And do you also understand the range of
21 penalties, including the maximum sentence to which you're
22 potentially exposing yourself by the plea?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In addition to the offense that's recited
25 in the indictment, the indictment also contains a forfeiture

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1 allegation through which the Government has indicated it will
2 seek to recoup from you the proceeds of illegal conduct
3 described in the indictment.

4 Are you aware that the indictment contains a
5 forfeiture allegation?

6 THE DEFENDANT: A forfeiture allegation?

7 THE COURT: Yes.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that you have a right to
10 plead not guilty and to persist in that plea?

11 THE DEFENDANT: Excuse me?

12 THE COURT: Do you understand that you have a right to
13 plead not guilty and to persist in that plea?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that you have a right to
16 have a jury trial on the charge contained in the indictment?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that if you plead not
19 guilty and go to trial the burden would be upon the Government
20 to prove that you're guilty beyond a reasonable doubt?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that at a trial you
23 would be presumed innocent until the Government proved your
24 guilt beyond a reasonable doubt?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Do you understand that at such a trial,
2 and at every other stage of the proceedings, you would have the
3 right to be represented by an attorney; and if necessary, the
4 Court would appoint an attorney to represent you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you also understand that at a trial you
7 would have the right to testify, to confront and question any
8 witnesses who might testify against you, and the right not to
9 be forced to incriminate yourself? That is, you don't have to
10 be a witness against yourself?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that at a trial you
13 would be entitled to present evidence, to call witnesses to
14 testify, and to compel the attendance of witnesses?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that if you plead guilty
17 there will be no trial of any kind so that you give up your
18 trial rights and the only remaining step will be for the
19 assigned district judge to sentence you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you certain that you understand the
22 nature of the charge to which you are pleading?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And are you certain that you understand
25 the range of penalties, including the maximum sentence to which

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1 you're potentially subjecting yourself by your plea?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The offense to which you are tendering a
4 plea involves a controlled substance, and as a result of your
5 tender of a plea to such an offense, pursuant to Title 21
6 United States Code Section 862, you may become ineligible for
7 certain federal and federally-funded benefits to which you
8 might otherwise be eligible including, among others, food stamp
9 benefits, and educational loans or grants.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: In addition, the offense to which you are
13 tendering a plea of guilty is a felony offense, and as a result
14 of your tender of a plea of guilty to a felony offense, you may
15 be giving up certain valuable civil rights that you possess
16 among others the following:

17 The right to hold public office, the right to serve on
18 a jury, the right to vote, the right to possess any firearm,
19 including rifles and shotguns, the right to be considered for
20 certain types of employment, and the right to possess or obtain
21 certain professional licenses.

22 Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that the sentencing
25 judge may be obligated to impose a special assessment on you?

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1 THE DEFENDANT: Could you repeat that?

2 THE COURT: Do you understand that the sentencing
3 judge may be obligated to impose a special assessment on you as
4 part of the sentence to be imposed?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Have you and your attorneys talked about
7 how the Sentencing Commission Guidelines, which are advisory
8 only, might inform the sentence to be imposed upon you?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that in determining your
11 sentence the sentencing judge is obligated to calculate an
12 applicable sentencing guidelines range and possible departures
13 under the sentencing guidelines?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that, in addition to the
16 factors outlined in the Sentencing Commission Guidelines, the
17 sentencing judge will also consider factors as set forth at 18
18 U.S.C. Section 3553 in determining what an appropriate sentence
19 might be for you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that parole has been
22 abolished, and if you are sentenced to prison you will not be
23 released on parole?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that the answers you

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1 give to me today under oath may in the future be used against
2 you in a prosecution for perjury or false statement if you do
3 not tell the truth to the Court?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What are the elements of the offense set
6 forth at Count One of the indictment?

7 MS. GREENWOOD: Yes, your Honor. Count One of the
8 indictment has three elements:

9 First, the existence of a conspiracy. That is, an
10 agreement or understanding between two or more persons to
11 distribute a controlled substance or possess a controlled
12 substance with the intent to distribute;

13 Second, the defendant knowingly and willingly was a
14 member of that conspiracy; and

15 Third, that the conspiracy involved an agreement to
16 distribute and possess with intent to distribute mixtures and
17 substances containing 500 grams and more of methamphetamine,
18 its salts, its isomers and salts of its isomers, in violation
19 of Title 21 United States Code Section 841(b)(1)(A).

20 In addition, the Government would be required to prove
21 by a preponderance of the evidence that venue is proper within
22 the Southern District of New York.

23 THE COURT: Thank you.

24 Have you heard the elements of the offense set forth
25 at Count One of the indictment?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is it still your desire to tender a plea
3 of guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have any threats been made to you by
6 anyone to influence you to plead guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have any promises been made to you
9 concerning the sentence that you will receive?

10 THE DEFENDANT: No.

11 THE COURT: I understand you and your attorneys, and
12 the representatives of the Government, have reached certain
13 agreements and understandings in connection with your tender of
14 your plea of guilty, and those agreements and understandings
15 have been reduced to a writing, specifically, a letter dated
16 November 26, 2019, addressed to Zachary Margulis-Ohnuma, your
17 attorney.

18 I have a copy of that document before me, which I
19 shall show you now.

20 Do you recognize the document?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you have an opportunity to review it
23 with your attorneys?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is there anything contained in the

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1 document that you do not understand?

2 THE DEFENDANT: No, sir.

3 THE COURT: Among others things, there is text in the
4 November 26, 2019 -- a writing -- to which you admit the
5 forfeiture allegation that I drew to your attention as being
6 part of the indictment.

7 Are you aware that such text exists in the document?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: There is also in that same document an
10 analysis of how the Sentencing Commission Guidelines might
11 apply to your case.

12 Are you aware of that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that, notwithstanding
15 the analysis of the guidelines in the November 26, 2019
16 writing, the impact, if any, that the Sentencing Commission
17 Guidelines may have on the sentence to be imposed upon you is
18 left solely to the discretion of the sentencing judge?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: There's also text in the November 26, 2019
21 writing that constricts your ability to appeal from or
22 challenge, or really "attack" the judgment of conviction or
23 sentence that might be imposed upon you, including any fine or
24 period of supervised release.

25 Are you aware of that?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: I want to show you the last page of the
3 November 26th, 2019 writing about which we have been speaking.

4 Is your true signature on that page?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did anyone force you to sign the document?

7 THE DEFENDANT: No, sir.

8 THE COURT: Let me turn my attention to your counsel
9 again.

10 Is counsel's signature also on the last page of the
11 document?

12 MR. MARGULIS-OHNUMA: Yes.

13 THE COURT: And it represents that the Government also
14 has signed the last page of the document?

15 MS. GREENWOOD: Yes, sir.

16 May I make one point for the record, if you're not
17 going to --- or I'm not sure if you are?

18 On the very first page as well there are initials by
19 myself and counsel reflecting language being stricken from the
20 first paragraph of the agreement, which was done prior to the
21 defendant signing the agreement.

22 I wanted to make sure for the record that that was
23 documented and that that was done on the version of the plea
24 agreement before the Court.

25 THE COURT: I observe the text that was stricken and

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1 the initials placed next to that stricken material.

2 Other than the agreements and understandings that you
3 and your attorneys and representatives of the Government have
4 made and reached that are outlined in the November 26th, 2019
5 writing about which we have been speaking, have any other
6 agreements or understandings been made or reached with you in
7 connection with your tender of a plea of guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Is your plea being made voluntarily, that
10 is, of your own free will?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did you commit the offense set forth at
13 Count One of the indictment?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Would you tell me in your own words what
16 it is that you did that makes you believe yourself guilty of
17 the offense set forth at Count One of the indictment?

18 THE DEFENDANT: I agreed to have narcotics sent to my
19 house under the understanding that they be distributed
20 elsewhere to other persons.

21 THE COURT: When, or approximately when, did you make
22 this agreement to have narcotics sent to your home as you
23 indicated a moment ago?

24 THE DEFENDANT: Approximately the Summer of 2018.

25 THE COURT: And where was it that you had this

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1 agreement to have narcotics sent to your home as you indicated
2 a moment ago?

3 THE DEFENDANT: In Manhattan.

4 THE COURT: When you agreed to have narcotics sent to
5 your home, as you described a few moments ago, did you know
6 that what you were doing was wrong?

7 THE DEFENDANT: Yes.

8 THE COURT: Any questions the Government would have me
9 put to the defendant?

10 MS. GREENWOOD: Yes. We would ask that the defendant
11 be questioned with respect to what kind of controlled substance
12 and the amount of the controlled substance being in excess of
13 500 grams and more of methamphetamine.

14 THE COURT: What was the narcotic that you indicated
15 was sent to your home based upon the agreement you entered into
16 as described earlier by you?

17 MR. MARGULIS-OHNUMA: I think the defendant would like
18 to rely on the Government's representations and evidence. It's
19 not an element that she had a knowledge. It's an element that
20 that was the amount, and we don't dispute that evidence. She
21 didn't have specific knowledge of the specific drugs.

22 THE COURT: Ms. Taiste, your counsel has indicated
23 that you do not contest the Government's assertion that the
24 controlled substance involved in the indictment 18 Criminal 684
25 is methamphetamine, and you do not contest the amount of that

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1 controlled substance that the Government alleges was involved;
2 is that correct?

3 THE DEFENDANT: Yes. I don't contest.

4 THE COURT: Are there any other questions the
5 Government would have me put to the defendant?

6 MS. GREENWOOD: No, your Honor.

7 THE COURT: All right.

8 Let me turn to defense counsel once again.

9 Do you know of any reason why your client should not
10 plead guilty?

11 MR. MARGULIS-OHNUMA: I do not, your Honor.

12 THE COURT: Is the Government aware of any reason why
13 the defendant should not plead guilty?

14 MS. GREENWOOD: No.

15 THE COURT: If the matter would proceed to trial, what
16 evidence would the Government offer in support of the charge
17 made in Count One of the indictment, 18 Criminal 684?

18 MS. GREENWOOD: Yes, your Honor. The evidence
19 gathered in this investigation, and that the Government would
20 present if it proceeded to trial, would include records --
21 including from a hotel, from shipment records, telephone
22 records and surveillance -- together with cooperating witness
23 testimony, all of which would establish that over the Summer of
24 2015, among other things, the defendant agreed to and, in fact,
25 received a shipment of methamphetamine that was shipped from

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1 California to Manhattan, New York, and contained approximately
2 15 pounds of material that was subsequently tested and
3 determined to be methamphetamine to her apartment in Manhattan;
4 and after that package was seized by law enforcement in
5 transit, the defendant called UPS from her cell phone to
6 inquire about the status of the package and the tracking of the
7 package; and then in addition, your Honor, evidence with
8 respect to other packages that were also sent to the
9 defendant's apartment in Manhattan as part of that same
10 conspiracy.

11 THE COURT: And these other packages contained what?

12 MS. GREENWOOD: The other packages were not recovered.
13 We believe they were additional packages containing
14 methamphetamine.

15 The one package that was intercepted and was not
16 actually delivered to the defendant's apartment is the one that
17 contained methamphetamine.

18 The remaining evidence would have been argued to the
19 jury to also have contained methamphetamine, but they were not
20 actually recovered.

21 In addition, at the time of the defendant's arrest,
22 her apartment was searched and there was evidence also
23 confirming her participation in the narcotics conspiracy; for
24 example, a journal with detailed entries about drug
25 transactions that she was involved in since at least July 2017,

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1 including entries in which she describes working as her
2 codefendant's assistant in drug trafficking.

3 THE COURT: I believe I heard you to say that this
4 occurred in the Summer of 2015.

5 MS. GREENWOOD: No, excuse me. The Summer of 2018.

6 THE COURT: All right. Thank you.

7 MS. GREENWOOD: Excuse me your Honor. 2018.

8 THE COURT: I assume Ms. Taiste understands the nature
9 of the charge made against her and the consequences of the plea
10 of guilty.

11 I'm satisfied the plea's being made voluntarily and
12 knowingly and that there is a factual basis for the plea, so I
13 shall report and recommend to the assigned district judge that
14 the plea be accepted by the district judge, and I will direct
15 that a presentence report be prepared.

16 I will fix a date for sentencing and direct the
17 parties to contact the assigned district judge to determine
18 whether the date is convenient for a sentencing proceeding.

19 MS. GREENWOOD: Your Honor, my apologies. I had told
20 Mr. Contreras that there was not a sentencing date, and I had
21 subsequently spoke to Judge Marrero's clerk who set sentencing
22 for March 20th at 10:15 a.m.

23 THE COURT: Thank you.

24 I shall direct that the presentence report be prepared
25 prior to the 20th day of March, 2020.

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1 In connection with the generation of that report, the
2 Government should provide its case summary materials to the
3 probation office not later than 14 days from today, and the
4 defendant and her counsel should arrange for an interview with
5 the probation office not later than 14 days from today.

6 I direct the Government to obtain a transcript of the
7 minutes generated during this proceeding and present same to
8 the assigned district judge before the date of sentence.

9 Is there any request with respect to bail?

10 MR. MARGULIS-OHNUMA: No. Just that it be continued.

11 THE COURT: What's the Government's position on the
12 application?

13 MS. GREENWOOD: I think, your Honor, until Judge
14 Marrero accepts the plea we consent to the arrangement
15 continuing. We think at that time we would discuss with
16 counsel whether we'd seek remand.

17 THE COURT: Application is granted.

18 Anything else we need to address?

19 MR. MARGULIS-OHNUMA: Not from the defendant. Thank
20 you.

21 MS. GREENWOOD: Not from the Government.

22 THE COURT: Very well. Good day.

23 (Adjourned)



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 26, 2019

BY EMAIL

Zachary Margulis-Ohnuma, Esq.
260 Madison Avenue, 17th Floor
New York, NY 10016
(212) 685-0999

Re: *United States v. Kenyatta Taiste, 18 Cr. 684 (VM)*

Dear Mr. Margulis-Ohnuma:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Kenyatta Taiste ("the defendant") to Count One of the above-referenced Indictment (the "Indictment"). Count One charges the defendant with conspiring to distribute and possess with intent to distribute: ~~(a) 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of Title 21, United States Code, Sections 841(b)(1)(A) and 846; and (b) mixtures and substances containing a detectable amount of gamma-Butyrolactone ("GBL"), an analogue of gamma-Hydroxybutyric acid,~~ in violation of Title 21, United States Code, Sections ~~843~~, 841(b)(1)(C), and 846. This charge carries a maximum sentence of life imprisonment; a mandatory minimum sentence of 10 years' imprisonment; a maximum lifetime term of supervised release; a mandatory minimum term of five years' supervised release; a maximum fine, pursuant to Title 18, United States Code, Section 3571 and Title 21, United States Code, Section 841(b)(1)(A), of the greatest of \$10,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

J.C. 12/18
J.W. 12/18

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations, if any, as to which this Office cannot, and does not, make any agreement) for participating in a conspiracy, from in or about August 2017 through in or about August 2018, to distribute and possess with intent to distribute methamphetamine and GBL, as charged in Count One of the Indictment, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges she is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant furthermore admits the forfeiture allegation with respect to Count One of the Indictment and agrees to forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of said offense and any and all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offense. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon her in addition to forfeiture.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The November 2018 Guidelines Manual applies to this case.
2. U.S.S.G. § 2D1.1 is the Guideline applicable to Count One.
3. Pursuant to U.S.S.G. § 2D1.1, Application Note 8(B), the Drug Equivalency Tables are a means of combining different controlled substances to obtain a single offense level. The offense involved the following quantities of controlled substances, which are the equivalent of the following Converted Drug Weight, pursuant to U.S.S.G. § 2D1.1, Application Note 8(D):

| Controlled Substance | Quantity/Weight | Converted Drug Weight |
|----------------------|-----------------|-------------------------|
| Methamphetamine | 13.15 kilograms | 26,300 kilograms |
| GBL | 200 kilograms | 1,760 kilograms |
| Total | | 28,060 kilograms |

4. Pursuant to U.S.S.G. § 2D1.1(c)(3), the base offense level is 34, because the defendant's offense involved at least 10,000 kilograms of Converted Drug Weight but less than 30,000 kilograms of Converted Drug Weight.

5. Pursuant to U.S.S.G. § 2D1.1(b)(18), because it appears to this Office, based on the information currently available to it, that the defendant meets the criteria set forth in subdivisions (1)-(5) of U.S.S.G. § 5C1.2(a), the offense level is reduced by two levels.

6. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through her allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Government will move at sentencing for an additional one-level reduction, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of her intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 29.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has two criminal history points, calculated as follows:

1. On or about November 7, 2005, the defendant was convicted of filing a false police report of a felony, in violation of South Carolina Penal Code, section 16-17-722, a felony, and breach of trust with intent to defraud involving property exceeding \$5,000, in violation of South Carolina Penal Code, section 16-13-230, a felony. On or about November 7, 2005, the defendant was sentenced to a term of probation. Pursuant to U.S.S.G. § 4A1.2(e), this conviction results in no criminal history points.
2. Pursuant to U.S.S.G. § 4A1.1(d), two points are added because the defendant committed the instant offense while on parole.

In accordance with the above, the defendant's Criminal History Category is II.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's Guidelines range is 97 to 121 months' imprisonment. In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 29, the applicable fine range is \$30,000 to \$10,000,000.

Title 21, United States Code, Section 841(b)(1)(A) requires a statutory minimum term of imprisonment of 120 months. Accordingly, absent relief from the statutory minimum sentence, the defendant's sentence would be at least 120 months. On the basis of the information available to this Office, however, the defendant appears to satisfy the conditions set forth in Title 18, United States Code, Section 3553(f) for relief from the statutory minimum sentence provision. Accordingly, absent new information, the Government will take the position at sentencing that the statutory mandatory minimum sentence does not apply, and that the Guidelines range is therefore in the range of 97 to 121 months (hereinafter "the Stipulated Guidelines Range").

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through her allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that her entry of a guilty plea to the charged offense authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw her plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241, of any sentence within or below the Stipulated Guidelines Range of 97 to 121 months' imprisonment, even if the Court denies the defendant's application for safety valve relief, and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The

parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$10,000,000, and the Government agrees not to appeal any fine that is greater than or equal to \$30,000. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that she has accepted this Agreement and decided to plead guilty because she is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw her plea or to attack her conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks Act* material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, or impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if she is not a citizen of the United States, her guilty plea and conviction make it very likely that her removal from the United States is presumptively mandatory and that, at a minimum, she is at risk of being removed or suffering other adverse immigration consequences. If the defendant is a naturalized citizen of the United States, she recognizes that pleading guilty may have consequences with respect to the defendant's immigration status. For example, under federal law, an individual may be subject to denaturalization and removal if her naturalization was procured by concealment of a material fact or by willful misrepresentation, or otherwise illegally procured. The defendant acknowledges that she has discussed the possible immigration consequences (including removal or denaturalization) of her guilty plea and conviction with defense counsel. The defendant affirms that she wants to plead guilty regardless of any immigration or denaturalization consequences that may result from the guilty plea and conviction, even if those consequences include denaturalization and/or removal from the United States. The defendant understands that denaturalization and other immigration consequences are typically the subject of a separate proceeding, and the defendant understands that no one, including her attorney or the District Court, can predict with certainty the effect of the defendant's conviction on the defendant's immigration or naturalization status. It is agreed that the defendant will have no right to withdraw her guilty plea based on any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge her conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including removal or denaturalization) resulting from her guilty plea and conviction.

It is further agreed that should the conviction(s) following the defendant's plea(s) of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any

counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

GEOFFREY S. BERMAN
United States Attorney

By:

Nicholas W. Chiuchiolo
Nicholas W. Chiuchiolo
Assistant United States Attorney
(212) 637-1247

APPROVED:

George D. Turner
George D. Turner
Co-Chief, Narcotics Unit

AGREED AND CONSENTED TO:

Kenyatta Taiste
Kenyatta Taiste

12/18/19
DATE

APPROVED:

Zachary Margulis-Ohnuma
Zachary Margulis-Ohnuma, Esq.
Attorney for Kenyatta Taiste

12/18/19
DATE



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

March 9, 2020

BY HAND DELIVERY

The Honorable Victor Marrero
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Kenyatta Taiste, 18 Cr. 684 (VM)

Dear Judge Marrero:

The defendant in the above-referenced matter entered a guilty plea on December 18, 2019, before Magistrate Judge Fox. The Government respectfully requests that Your Honor accept the defendant's plea. Enclosed please find for your consideration (1) a proposed Order accepting the defendant's plea; (2) a transcript of the guilty plea allocution; and (3) the parties' plea agreement. A sentencing hearing is currently scheduled for May 8, 2020.

Very truly yours,

GEOFFREY S. BERMAN
United States Attorney

by: 
Nicholas W. Chiuchiolo
Assistant United States Attorney
(212) 637-1247